

Memorandum

To : Mr. Boyd Gibbons
Director

Date : February 2, 1994

From : Department of Fish and Game

Subject: Fish Screening Policies

The State and Federal listings of the winter-run chinook salmon and the Delta smelt have raised public and agency awareness and resulted in numerous questions about the interpretation and applicability of existing Department of Fish and Game fish screening authorities.

The specific authorities for the installation of fish screens are covered in four sections of the Fish and Game Code. The fourth section can be used to require screens if the measure is appropriate and mitigation for other impacts is needed. The four Code sections covering our legal authority are:

- ° Section 1600 et seq. Streambed alteration work can require a fish screen as mitigation. Such a requirement would be subject to the arbitration provisions of this section of the Code.
- ° Section 5980 et seq. Covers diversions (installed prior to the effective date of Section 6100) with a capacity of more than 250 cubic-feet per second (CFS). Diversions shall be screened if ordered by the Department, and the costs shall be shared by the Department and the owner of the diversion. There is an exception to cost sharing provisions if the diversion is part of a project which generates power, or is a Federal project.
- ° Section 6020 et seq. Covers diversions (installed prior to the effective date of Section 6100) with a capacity of 250 CFS or less. The Department may screen and operate at its own cost, if it deems the installation necessary.
- ° Section 6100 et seq. New diversions installed since January 1, 1972, must be screened if the Department determines that they affect salmon or steelhead. All costs incurred are to be borne by the operator of the diversion.


Recent court actions have clarified our responsibilities under Code Section 6020 et seq. It is now clear that actions under this section are discretionary on the part of the Department (Department of Fish and Game v. Anderson Cottonwood Irrigation District decision).

The language of Section 5980 et seq. appears to require mandatory actions by the Department of Fish and Game. Although these sections have not been the subject of recent State court interpretations, they have been addressed in Federal court (Glenn Colusa Irrigation District).

We recently requested an update to the existing Memorandum of Law to incorporate recent court decisions and the passage of both the Federal and State Endangered Species acts.

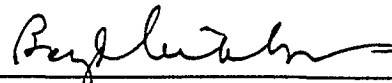
In addition to the above specific authorities, we have required installation of fish screens under permit terms or conditions (mitigation) for specific projects subject to review by other permitting authorities. Typically this occurs during the review of a National Environmental Policy Act-Environmental Impact Statement, a California Environmental Quality Act-Environmental Impact Report, or under the provisions of the U.S. Fish and Wildlife Coordination Act. Permits issued by the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, the State Water Resources Control Board, and the Regional Water Quality Control boards have also provided us with opportunities to require fish screens.

With your approval, Department staff shall administer these authorities in accordance with the attached fish screening policy.


Tim Farley, Chief
Inland Fisheries Division

Attachments

cc: See next page

Approved: 
Boyd Gibbons
Director

Date: 3/9/94

Mr. Boyd Gibbons
February 2, 1994
Page Three

cc: Mr. A. Petrovich, Jr., Deputy Director

Mr. John Turner, Chief, Environmental Services Division

Mr. Perry Herrgesell, Chief, Bay Delta Division

Mr. Rich Elliott, Regional Manager, Region 1

Mr. Ryan Broddrick, Regional Manager, Region 2

Mr. Brian Hunter, Regional Manager, Region 3

Mr. George Nokes, Regional Manager, Region 4

Mr. Fred Worthley, Regional Manager, Region 5

Mr. Craig Manson, General Counsel

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